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ABSTRACT

The case study examines the review used by the then Bureau of Education for the Handicapped (BEH) to evaluate the compliance of special education programs in Massachusetts with P.L. 94-142, the Education for All Handicapped Children Act. Procedures to develop and implement the waiver review over the period October 1977 to June 1978 are reported. The waiver involves restrictions on supplanting state and local funds with federal funds. Four procedural components are identified and discussed in detail: initiation, design and specification, site selection, and on-site review. Interplay between BEH and the state education agency is described. It is explained that the review covered such aspects as child find, due process procedures and results, personnel, adequacy and comprehensiveness of state monitoring system, and the waiting list of children for services. Quantitative reports are specified for the state to prepare, and a timetable is proposed. Procedures used to select those local education agencies and state operated programs for program review are detailed, and the resulting 12 local educational agency sites are considered. On-site review procedures, including administrator review and public hearings, are described. (CL)

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Project to Develop BEH Waiver Requirements, Procedures, and Criteria

REPORT OF CASE STUDY

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PROJECT TO DEVELOP BEH WAIVER REQUIREMENTS, PROCEDURES AND CRITERIA

REPORT OF CASE STUDY:

Massachusetts' Waiver Review Process

July 3, 1978

Prepared by:

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INTRODUCTION

This report is a case study of the waiver review conducted by the Bureau of Education for the Handicapped (BEH), U.S.O.E., in the Commonwealth of Massachusetts. The BEH review process was conducted at the request of the Massachusetts' Department of Education over the period of October, 1977, to June, 1978.

As the first such review conducted by BEH since the implementation of Public Law 94-142, The Education for All Handicapped Children Act, documentation of the process and, at a later date, evaluation of this process, is considered critical to the development of requirements, procedures and criteria for the waiver review process BEH will use in other states. The experiences reflected in the following pages chronicle the Massachusetts' waiver review according to the major procedural components identified in the P&HS technical report entitled "BEH Guide: Design and Specification." These procedural components are:

Waiver Review Process: Initiation

Waiver Review Process: Design and Specification

Waiver Review Process: Site Selection

Waiver Review Process: On-Site Review

Although the report is organized on the basis of chronology of procedures, each section discusses the data requirements and timelines employed throughout the process. Although the waiver review process culminates in either approval or disapproval of a state's waiver request, this report covers

activities only up to the point of reporting on-site review data to the waiver team leader. For the purposes of reporting the activities which took place during the Massachusetts' experience, the final step of decision is not considered relevant.

I. WAIVER REVIEW PROCESS: INITIATION

The purpose of this section is to describe those activities which served to initiate the BEH waiver review process in Massachusetts.

A. SEA Written Request. In October 1977, the Massachusetts Department of Education (SEA) submitted to the U.S. Commissioner of Education a request for a waiver of the non-supplant restriction of Sections 613 (a)(9)(B) and 614 (a)(2)(B)(ii) of the Education for All Handicapped Children Act as amended by PL 94-142. As specified in Section 121.589a of the regulations for PL 94-142, such a written request by an SEA to the U.S. Office of Education initiates a waiver review process that is subsequently carried out by the Bureau of Education for the Handicapped U.S.O.E. and the SEA making the request.

B. BEH Response. At the time of the Massachusetts request, the procedures that would be employed in determining whether a waiver would be granted to a state had not yet been developed. Although the PL 94-142 regulations outlined general guidelines for obtaining a waiver, the specific data and procedural requirements were to be developed by mid-1978 through a BEH contract. Therefore, in order to respond to the Massachusetts request in a timely fashion, BEH agreed to design and conduct a waiver review with the assistance of the Massachusetts SEA and the designated contractor based upon the guidelines stated in the regulations.

II. WAIVER REVIEW PROCESS: DESIGN AND SPECIFICATION

The purpose of this section is to describe the activities that were involved in determining the data requirements and procedures that BEH would use in considering Massachusetts' request for a waiver. In addition, the data requirements, procedures, and timetable for the waiver review are reported.

A. BEH/SEA Orientation Meeting. In late December, 1978, at the request of the Massachusetts Department of Education, representatives of that agency and BEH met in Washington to discuss several issues related to the waiver review process including the review timeline, criteria for evaluating data provided by the state, interpretations of statutory and regulatory language related to the waiver, and the general orientation the Bureau would ultimately take in designing and conducting the waiver review process. The SEA representatives stated that in order for a waiver decision to be useful to them for FY 1980 planning by the LEAs, the review would have to be conducted and a decision made by U.S.O.E. by early June, 1978. They requested a response to their initial letter dated October 31, 1977, requesting that BEH specify data that would be required and offered to work with BEH and the contractor in the development of the review process components that would be employed both in their own waiver review and with any state requesting a waiver.

B. Design Meeting. In response to the Massachusetts request that BEH specify the data requirements and procedures to be used in the waiver review, one BEH staff member met with SEA staff in Boston

in late January, 1978, to discuss the review's design and specifications. At this meeting, agreement was reached on a tentative outline of evidence that would be required in order to consider the Massachusetts' waiver request. This outline elaborated specific requirements set down in the regulations and established that certain documentation, program reviews, and public participation would comprise the waiver review process. The major data components and administrative procedures agreed to at that meeting included:

1. A quantitative study of child find.
2. A quantitative study of due process procedures and results to date.
3. A quantitative study of personnel delivering services to children with special needs.
4. A study of the cost of delivering services to children with special needs.
5. A local education agency (LEA) questionnaire.
6. A special state study on the adequacy and comprehensiveness of:

   . child find system
   . cost of education to parents
   . due process system
   . state monitoring system
   . waiting list of children for services

   This study was to include statements and comments by a representative sample of advocacy, parent, and professional organizations.
7. An administrative/compliance review to be conducted by BEH.
8. Public hearings to be arranged and conducted by BEH.
9. An SEA plan for distribution of funds if the waiver should be granted (if different from that designated in the PL 94-142 regulations).

C. Data Specification and Design. In early February, before this tentative outline of evidence could be more fully detailed and agreed to by BEH and the SEA as a final waiver review plan, new BEH personnel were assigned to the Massachusetts waiver review due to the death of the staff member originally assigned to the project. Because little further development of the tentative outline had been accomplished by that time, a second design meeting was scheduled for late February in Boston between the newly assigned BEH waiver review leader, the BEH state plan officer who was currently working with Massachusetts, and SEA staff members for the purpose of finalizing the data components, administrative procedures, and specific documentation that BEH would require in order to consider the state's waiver request for a waiver to supplant. This meeting and subsequent telephone conversations in early March established the initial data and procedural requirements as well as the timelines to be adhered to in order that a June decision could be rendered. The following details both the requirements and the timelines:

REQUIREMENTS TO BE MET IN ORDER FOR BEH TO CONSIDER MASSACHUSETTS' REQUEST FOR WAIVER

A. QUANTATIVE REPORTS TO BE SUBMITTED:

1. Childfind

a. Number of children referred for evaluation
b. Number actually evaluated
c. Number of evaluations pending
d. Number found to need special education
e. Number found not to need special service

f. Number receiving service
g. Number waiting to receive service
h. If any children reported as pending evaluation or as waiting for service, full explanations will be attached.
i. When the BEH team is on-site, such data will be verified (within the SEA, and within LEA's)

2. Due Process Procedures

a. Number of hearings requested
b. Number resolved through mediation
c. Number of formal hearings held
d. Description of nature of hearings held
e. Time from hearing requests to hearing held
f. Evidence that the SEA has verified that impartial hearing officer decisions have been implemented
g. Number and nature of impartial hearings pending
h. Number and nature of reviews pending
i. Number and nature of court appeals filed
j. Number and nature of court appeals finalized
k. Number and nature of court appeals pending
l. Findings of hearing
m. Findings of appeals
n. Data will be verified during on-site activities

3. Personnel

a. Number of personnel, FY 75-77
b. All agencies, including other State and private
c. Data presented in terms of pupil - teacher ratios
d. Needs assessment data
e. Certification data included
f. Number of personnel, by prototype
g. Personnel numbers can be observed in terms of individual programs while on-site in SEA
h. Numbers can be verified while on-site in LEAs

4. Costs

a. FY 75-77 dollars expended by LEAs from local revenue for regular education programs according to following categories:

Instruction
Overhead
Recreation
Transportation
Equipment
Tuition

b. FY 75-77 local dollars expended for special education, categories same as above

c. State dollars for regular education, FY 75-77
d. State dollars for special education, FY 75-77
e. Federal dollars for regular education
f. Federal dollars for special education

5. Student Information

a. FY 75-77 FTE Data, all agencies, all children, by grades
b. FY 75-77 FTE Data, all agencies, handicapped population, by prototype, by level
c. Count of all children, by grades
d. Count of all handicapped, by prototype and levels (at least elementary, secondary)

B. SPECIAL STATE STUDY

1. Study will be done by SEA personnel

2. Information will be solicited from:

a. Federation of Organization serving the Handicapped

Massachusetts ARC
Massachusetts ACLD
Advocacy Center
CEC
Other parent organizations

b. Statewide Advisory Panel
c. Massachusetts Association of School Superintendents

3. Topics to be addressed in the study include:

a. Childfind
b. Costs, if any, to parents
c. Due process procedures
d. Evaluation procedures
e. Monitoring of local programs, including LEAs, private schools, other State agencies

4. The emphasis of this study will be to solicit evaluative comments from consumers, clients, advocates, and others regarding the general adequacy and effectiveness of educational programs for handicapped children and of the "protections" afforded those students and their parents.

C. SITE VISIT BY BEH

1. Comprehensive across all programmatic variables, but emphasizing free appropriate public education, individualized education programs, and other accountability mechanisms.

2. BEH staff will visit a minimum of 12 to 15 LEAs and 5 state-operated programs. Folders will be "more than typically" inspected to verify such requirements as prior consent, participation of parents in IEP development, and especially to verify that services are available to students as described in IEPs.

3. Local sites will be selected by BEH.

4. Urban/rural/suburban, size of district, geographic location, wealth of district and other factors will be considered in selecting the sites.

D. HEARINGS

1. Two will be held, one in Boston and one in Springfield.

2. Will be held on May 16 in Springfield and on May 17 in Boston.

3. BEH personnel will conduct hearings.

4. Arrangements for hearings, such as meeting facilities and equipment, will be the responsibility of the SEA.

5. Responsibility for adequate public awareness, including notification of all school districts and other programs responsible for educating handicapped children, notification of all parent and advocate groups, radio and television public service announcements, and newspaper notices, will lie with the BEH

TIMETABLE

A. By March 31, SEA will submit:

1. Childfind data
2. Due process data
3. Personnel data
4. Student data
5. Cost data

B. By April 21, BEH will analyze data submitted by SEA to determine if all quantitative data requirements have been met.

C. By April 25, SEA will submit results of Special Study.

D. BEH will analyze Special Study results by May 11.

E. Week of May 15-19, BEH Site Visit

F. May 16, 17 - Hearings held by BEH/SEA

G. June 8, 1978 - Notification by BEH regarding the approval/ disapproval of Massachusetts SEA's request for waiver.

One significant modification in the original tentative outline was made when the data requirements were established at the second design meeting. The LEA questionnaire (point # 5) was deleted from the original 9-point plan with the understanding that on-site review of LEAs as part of the compliance review (point # 7) would satisfy the need for LEA specific data.

D. Data Collection. During the time between early March and mid-April the Massachusetts SEA compiled the data required under points # 1-4 and submitted them to BEH. In addition, the SEA designed and prepared the special state study and distributed it to three organizations requesting that they respond to questions related to the performance of the estate in five special education program areas using a rating scale of 1-10. This study was distributed for responses to the State Advisory Commission, the Massachusetts Association of School Superintendents, and the Coalition Task Force on the PL 94-142 Waiver, which represented the special education advocacy, parent, and

professional organizations in Massachusetts. The study was distributed by the SEA during the last week of March with responses requested by April 14th.

In mid-April BEH staff members met in separate sessions in Boston with SEA personnel and representatives of consumer and advocacy organizations. The purpose of the SEA meeting was to clarify responsibilities and establish the final data needed by BEH in order to select LEA sites and to discuss issues related to the on-site procedures that would be employed by BEH in the program review. The purpose of the consumer/advocacy meeting was to seek their input for the selection of LEA and state-operated program sites that would be visited during the program review, to discuss the waiver concept and waiver review procedures that were being used in Massachusetts, and to discuss the potential involvement of these organizations during the remainder of the waiver review process.

On-Site Review Rescheduling - During the last week of April the Massachusetts SEA requested a postponement of the on-site review regularly scheduled for the week of May 15-19. At least in part, this request was presented by pressure from advocacy, consumer, and professional organizations. Several of these groups were concerned that they had not been given adequate notice of the Massachusetts waiver review process and, as a result, were not able either to prepare appropriate evidence related to the availability of a free appropriate public education or to inform their constituents

of the opportunity to participate in the public hearings. As requested by the SEA, BEH agreed to the following schedule modifications:

BEH SITE - VISIT

May 30 - June 9, 1978

May 30 - June 2:	Program reviews in LEAs, state operated programs, and the SEA.
June 5:	Holyoke Public Meeting.
June 8:	Boston Public Meeting.
June 6, 7, 9:	Interviews with organization representatives.
June 30:	U.S.O.E. decision on waiver request.

III. WAIVER REVIEW PROCESS: SITE SELECTION

The purpose of this section is to describe the procedures used to select those local education agencies and state operated programs where program reviews would be conducted by BEH staff.

A. BEH Review of Data Collected by the SEA. In order to facilitate the purposive selection of programs for BEH on-site review, a limited amount of LEA-specific data was requested by the Bureau on a select sample of approximately 30 LEAs. This sample was taken from a total of 72 districts identified by National Center for Education Statistics' (NCES) sample selection procedures. Data submitted by the SEA on the 30 LEAs was reviewed and then recorded on a matrix developed by the waiver review team leader. In addition, information on LEAs which had been provided by the parent advocacy, and professional organizations and the SEA was entered into the matrix grid. The matrix organized the following information by LEA:

- rural, urban, suburban
- wealth index
- geography
- participation in educational collaborative
- participation in vocational-technical school program
- contracts for preschool programs
- significant ethnic populations
- dates of most recent state audit
- child count
- ADA
- number of hearings held
- referred by organizations
- referred by SEA
- travel constraints

B. Selection of Programs for On-Site Review. Based upon the LEA data entered into the matrix, a selection of twelve LEAs for on-site program review was made. The districts selected represented at least one and usually several of the criteria listed above. The selection of state-operated program sites was made by the waiver team leader based upon size. The five largest institutions, each serving a different disability group, were chosen. The LEA and state-operated program site selection was completed by April 28, 1978, and communicated both by phone and letter to the SEA.

The week prior to the on-site review (May 25) BEH was requested by the SEA to increase by five the number of LEAs that would be reviewed. This request was made because the SEA wanted programs it considered to be exemplary to be included in the sample. BEH accommodated the SEA request to the extent possible, considering that travel, personnel assignments and the review schedule had already been arranged, by agreeing to add three LEAs to the on-site review schedule.

C. BEH Specification of On-Site Review Procedures. At the time of program site selection, the BEH team leader communicated to the SEA the general nature of the review activities that would take place on-site. These activities included a review of procedures, individual file review, and individual program review in classrooms.

IV. WAIVER REVIEW PROCESS: ON-SITE REVIEW

The purpose of this section is to describe the activities involved in the preparation, implementation and reporting of on-site review activities. On-site activities are described according to the two major components of Program Review and Public Participation.

A. Program Review

1. Preparation. The SEA notified the LEAs and state-operated programs that BEH would be conducting a program review and informed them of the review procedures. Those programs which were added to the list of LEAs to be reviewed the week before the visit were notified by telephone by the SEA one day prior to the beginning of the visit.

a). Scheduling. The BEH team leader met in Boston with SEA staff members two weeks prior to the on-site review to arrange the

program review schedule. Such factors as travel time, the number of the BEH personnel, and the amount of time required to conduct reviews were considered in establishing the program review schedule.

b). Orientation of BEH Review Team. The BEH waiver team leader identified 7 other professional and 2 support staff members as review team members two weeks prior to the on-site review. Two days prior to the beginning of the review (May 25) an orientation meeting for the entire team was held. Procedures to be followed during the on-site visit were briefly discussed and compared to procedures employed in the Bureau's program administrative reviews. In addition, there was some discussion of information relevant to Massachusetts' special education system. Two of the team members who had prepared forms for the recording of data collected in the LEAs and state-operated programs based upon PL 94-142 requirements discussed the forms with other team members.

2. On-Site Procedures. Members of the BEH review team were assigned either singly or in pairs to review each of the special education programs in the 15 local education agencies and 2 state-operated programs. The procedures used in the program reviews were patterned after those employed in BEH's program administrative reviews. Distinguishing the waiver program reviews from the PARs were the length of time staff spent at each program site (one to two days rather than half that time) and the programming areas examined

(variables related to the concept of free appropriate public education rather than all PL 94-142 requirements).

a). LEAs and State-Operated Programs. The experiences of two BEH team members who reviewed several programs in one region of the state serve to highlight the major review activities common across all such program visited.

Orientation to the regional special education delivery system was provided by SEA regional office staff. Their presentation included a description of regional office responsibilities, focusing primarily on compliance monitoring, and an overview of district, colloborative, and institutional programs operating within their region. BEH staff briefly reviewed copies of state audit reports of those three LEAs that were to be reviewed and the responses by those districts to the audit reports. The orientation to the region lasted half a day. SEA regional office staff then accompanied the BEH review team to each of the subsequent LEA and institutional sites.

In each of the LEA and state-operated programs the review consisted primarily of three activities: (1) interview of administrative staff to obtain an understanding of the programming options available and procedures operating relative to PL 94-142 requirements (due process, identification, assessment and placement of children, IEP development and implementation, etc.) as well as to obtain specific data related to such things

as numbers of children in programs, awaiting assessment or placement, numbers and ages of children by category of disability and program prototype, and number and certification of teaching staff; (2) review of pupil files to determine compliance with PL 94-142 requirements related to parental consent for evaluation, parental consent for placement, evidence that educational assessments had taken place and then their results used in program development, completeness of individualized education program plans including statements of the child's present level of performance, goal and objectives, criteria for evaluation, services to be provided, and the date of initiation of services; and (3) review of special education services of individual children for the purpose of verifying that goals, objectives, placement and services identified as being required in the child's education plan were accurate and in place in the classroom.

In all but the largest LEAs, approximately one half day was needed to conduct the administrator interview. Larger districts required nearly a full day for orientation. In all programs between 5 and 35 individual files were reviewed, requiring from one half to four hours. Visits to classrooms to track children whose education plans had been reviewed earlier in the day required from two to five hours. During classroom visits, BEH staff talked with teachers about the services they were providing children and the correspondence of services and placement to the content of the education plan.

b). SEA Review. The BEH team that conducted the review in the SEA was comprised of one professional and one support staff member. The team spent four days reviewing documentation and records related to the state procedures in its compliance monitoring system, complaint and due-process systems, and the system for the identification, evaluation and placement of handicapped children. Records on state audits of particular educational programs, and the number, nature and resolution of complaints made and hearings held were reviewed. Interviews were conducted with those SEA staff responsible for the statewide systems of childfind, monitoring, institutional programs and complaints. The activities cited above were conducted in order to verify that the SEA was carrying out its responsibilities under PL 94-142 to assure the availability of FAPE statewide.

B. Public Participation.

The participation of individuals in the waiver review process who would not have an opportunity to participate in the review of programs was determined by BEH to be critical to a comprehensive review of the availability of a free appropriate public education to handicapped children in Massachusetts. The regulations specified a role in the waiver review for parent and professional organizations by requiring that representatives of such groups be involved in the special state study. Bureau administrators extended the concept of public participation in order to afford an opportunity for input from the broader special education community, including advocacy organizations and individuals. Four different forms of public participation were designed into the waiver review process: 1) parent meetings to take

place in the geographic area of several of the program review sites; 2) two public meetings; 3) interviews with representatives of several interest groups; and 4) acceptance of written statements related to a free appropriate education submitted to BEH.

1. Preparation

a). Notification. In order to extend interested individuals and organizations the opportunity to provide information related to the availability of a free appropriate education, the BEH staff determined that adequate notification activities would be required and should include identification of target groups, selection of effective notification strategies and the development of appropriate notification materials.

- Identification of Targets of Notification.

  The following were identified by BEH to be the recipients of information related to opportunities to participate in the Massachusetts waiver review:

  - all LEAs
  - all state-operated programs
  - private schools serving handicapped children
  - other state agencies
  - consumer, advocacy and professional organizations
  - the general public

  The Massachusetts SEA provided lists of all state-related programs and the BEH staff identified the organizations by contacting national advocacy clearinghouses and

organizations which represent parents and by contacting state organizations.

- Strategies and Materials.

After BEH discussions with the SEA, state interest group representatives, the DHEW Office of General Counsel, and the Office of Civil Rights, three notification strategies were selected. The organized special education community would be notified via direct mailing and the general public would be notified through the placement of announcements in several local newspapers throughout the state and through the assistance of consumer and advocacy organizations which would communicate through their local and regional offices.

An announcement describing the waiver concept and waiver review process and publicizing the opportunity for public participation either in the public meetings or through written statements was developed by BEH with input from the SEA, interest groups, the DHEW Office of General Counsel and O.E. Office of Public Affairs. This announcement was mailed by BEH one week prior to the on-site review to LEA superintendents and directors of special education, directors of institutions and private schools, chairmen of all departments of special education in colleges and universities in the state, other state agencies, and interest groups.

A media announcement was developed by BEH and distributed for a one-time publication by the OE Region I Office of Public Affairs to approximately 200 local newspapers one week before the beginning of the on-site review.

b). Scheduling. One week prior to the waiver review visit the BEH team leader scheduled interviews with representatives of several special education interest groups for the second week of the site visit. Groups that would be interviewed included the Massachusetts Association of School Superintendents, the state's Office for Children, the Federation of Children with Special Needs, and the State Advisory Commission. On-site parent meetings were organized and scheduled for the BEH team by the state's Office for Children area offices.

2. On-Site Procedures

a). Parent Meetings. At several of the program sites during the first week of the review, BEH review team members met with groups of parents to describe the purpose of the waiver review and accept comments related to the availability of a free appropriate education. At the meetings, individual parents and parent group representatives related their personal experiences or the experiences of others and BEH staff asked questions to clarify the relationship of each comment to PL 94-142 requirements. Notes were taken by BEH staff on the content of the meetings for the purpose of follow-up inquiries and verification.

b). Public Meetings. Two one-day meetings were held the second week of the on-site review, one in Holyoke on June 5th and the other in Boston on June 8th. Three sessions were held at each meeting, one each in the morning, afternoon, and evening. The purpose of the meetings was to enable individuals and organization/agency representatives to present evidence related

to the availability of a free appropriate public education to BEH staff. The proceedings were chaired by two BEH staff members and recorded by stenographers provided by the SEA. Individuals attending the meetings were asked go sign-in. Those who wished to present comments orally did so in the order in which they signed in. The meeting chairpersons, after listening to up to a 10-minute presentation, asked questions of the presentors when clarification was needed. Notes taken by BEH staff members at each of the meetings were used to guide follow-up inquiries after the meetings.

c). Interviews. At BEH interviews with representatives of statewide interest groups, review team members described the purpose and procedures of the waiver review and discussed concerns and issues related to the availability of a free appropriate education. Some organization representatives had prepared written documentation which they submitted to BEH at these interviews for later consideration.

d). Follow-up. In an attempt to verify some of the information reported but undocumented in parent meetings and in the public meetings, limited follow-up inquiries were made. Following the Holyoke meeting, BEH staff spent one day verifying such comments related to the availability of a free appropriate education with directors of special education in two LEAs and two educational collaboratives and visited a pediatric nursing home to meet with administrative staff. Following the Boston meeting,

the BEH staff met for one day with SEA staff members and Office for Children personnel for similar verification purposes.

C. Recording of Data On-Site. Team members who conducted institutional and LEA program reviews recorded the data obtained whenever possible onto forms prepared by BEH staff. When the use of these forms was inappropriate, team members recorded data according to their preference, usually using brief notations.

D. Reporting of Data to Team Leader. Waiver review team members submitted reports of the data collected during program reviews to the team leader several days afte. the completion of the site visit. Although the team leader had proposed a reporting format, team members reported data according to personal preference.